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No. 426

SUPREME COURT OF THE UNITED STATES

October Term, 1953

L. B. GLOVER, GEORGE FRANKLIN HUMPHRIES, ET AL.,

Petitioners,

vs.

W. P. H. McFADDIN, GULF OIL CORPORATION, ET AL.,

Respondents.

PETITIONERS' MOTION FOR REHEARING ON THEIR PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

LEWIS B. PERKINS
976 National Press Building
Washington 4, D. C.
Attorney for Petitioners

E. GARLAND BROWN
J. B. ATOR
Jones Building
Corpus Christi, Texas
Of Counsel for Petitioners

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To The Honorable The Supreme Court Of The United States:

Comes now the petitioners in the above styled and numbered cause and respectfully files this, their Motion for Rehearing in said cause, this Honorable Court having denied petitioners' petition for certiorari on November 30, 1953, and as grounds for such motion would respectfully show the Court:

1.

This Court has jurisdiction of this cause by reason of the fact, that there is admittedly diversity of citizenship and there is also a question of the construction and intention of the

contracting parties of a Treaty between the United States of America and the Government of Spain, that was entered into between the contracting parties in the year 1819, at which time the after established Government of Mexico was a part of the Government of Spain.

Remarks and Reasoning

a. In denying the claim of the petitioners to the land sued for, the Court penalizes the citizen of America, and extends to the foreign conquered foe of America, a privilege beyond the rights of its own citizens.

b. In denying the right of citizens of the United States to have the controverted factual issues of this case be passed on by a jury, the Court virtually abrogates and abolishes the right of trial by jury, and adopts the premis that the adopted Rule 56 when invoked by motion gives the Court exclusive power to pass on the facts and reverses all the precedent heretofore followed by the Courts, that Rule 56 only gave the Court ministerial power to enter judgment where there were no controverted facts at issue.

c. In denying the right of the petitioners to recover for the reason that aliens to Mexico could not inherit under the facts alleged in this case, the Court held for naught the land laws of Mexico, Coahuila and Texas, which required that all titles be recorded in the public records, and likewise ignored and abolished the law of agency, (that was provided for in the laws of Mexico, Coahuila and Texas) which has been up-to-now the law of all civilized nations "since the memory of man runneth not to the contrary."

d. In affirming the judgments of the trial Court and the United States Circuit Court of Appeals and ignoring the Treaty between the United States and Spain entered into in 1819, establishes a precedent that even though Treaties between the United States and other nations are superior to the binding solemn effect of the Constitution of the United States, nevertheless a statutory inhibition as to aliens inheriting enacted by a minor subject and subdivision of a Treaty by the Supreme Sovereign takes precedence and is the supreme law governing the property rights of the citizens of the contracting sovereigns, and supercedes the Constitution of the United States and a solemn Treaty of the United States and the Government of Spain.

Conclusion

This suit insofar as the property rights of individuals and citizens of the United States are concerned, is one of the most important that has ever arisen in the United States. The title to lots of property situated in the vast territory covered by the Republic of Texas, and now the State of Texas, is affected by the final decision of this Court. In many instances, as is this case, exploiters and financial tycoons have wrongfully entered on the property and premises of those that have year in and year out, since the formation of this government, been the silent factors in building this nation to its greatness, and if Rule 56 permits the throwing aside of all controverted issues of fact, and entering judgment, as if all the facts were resolved against the citizen in favor of the trespasser, what hope can be left for the inherient property rights of the American citizen insofar as he is protected by the law of the land.

Wherefore, petitioners most respectfully pray that on rehearing this Honorable Court set aside its denial of the peti-

tion for certiorari; that it grant its writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit as prayed for in said petition for certiorari; and upon such hearing that the judgment below be reversed and judgment be entered remanding the case to the United States District Court of the Eastern District of Texas for trial on the controverted issues of facts that are joined in said case.

Respectfully Submitted

Lewis B. Perkins

LEWIS B. PERKINS
976 National Press Building
Washington 4, D. C.
Attorney for Petitioners

E. Garland Brown

E. GARLAND BROWN
Jones Building
Corpus Christi, Texas

J. B. Ator

J. B. ATOR
Jones Building
Corpus Christi, Texas

Counsel for Petitioners

I, E. Garland Brown, counsel for petitioners, certify that in my opinion the foregoing Motion for Rehearing is well founded in law and that the same is proper to be presented and filed, and is not interposed for delay.

E. Garland Brown

E. GARLAND BROWN

Counsel for Petitioners

A true copy of above motion has been delivered to counsel for the respondents.

E. Garland Brown

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